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Pesticides & Toxic Substances Law News for May 9, 2018

**Bloomberg
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Environment & Energy

Highlights

LEADING THE NEWS

No new stories today.

PRACTITIONER INSIGHTS

[Practitioner Insights: Challenges of Regulating Chemicals of Emerging Concern](#)

The identification of chemicals of emerging concern and the collection of data at low detection limits from drinking water resources has had significant consequences for water purveyors and potentially responsible parties and has created concern among water users. Christopher Roe of Fox Rothschild LLP and Nicholas DeRose and Adam Hackenberg of Langan Engineering and Environmental Services Inc. explore the consequences in this Practitioner Insights.

TODAY'S NEWS

[Walmart Backs States' Effort to Centralize Chemical Reporting](#)

By Pat Rizzuto

Walmart is working with a group to make it easier for companies to comply with state laws requiring businesses to report chemicals in children's products.

[Brazil's Vale Gets 'Unusual' \\$1.2M Fine for Buying Railway Ties](#)

By Michael Kepp

A 4.3 million reais (\$1.2 million) fine against Brazilian mining giant Vale SA for illegally purchasing railway ties to replace worn ones on the company's Amazon iron ore railway is "unusual," a Brazil environmental official said.

[Taiwan Creating One-Stop Shop for Environmental Permits](#)

By Yu-Tzu Chiu

Companies in Taiwan hope that a new ministry the government plans to establish by combining several agencies will streamline project requirements and make it easier for them to get environmental permits.

[Monsanto India Dealt a Setback on Critical Patent Holding](#)

By Eleanor Tyler

Monsanto Co.'s India subsidiary failed to convince India's Supreme Court to let it enforce its cotton seed patents until it decides whether genetically modified seeds can be patented at all in India.

MONDAY NIGHT WRAPUP

No new stories today.



Redefining EPA

Overhauling an agency and its mission
<https://insideepa.com/agency-at-a-crossroads>

Inside EPA's **Environmental Policy Alert**, 05/09/2018
<https://insideepa.com/newsletters/environmental-policy-report>

TSCA Tracker
<http://insideepa.com/specials/tsca-tracker>

Latest News

IG Adds Data Quality, Reporting To List Of EPA's Management 'Challenges'

EPA's Inspector General (IG) is updating and adding two entries to its annual list of management "challenges" facing the agency, warning EPA that it needs to address "systemic" problems in the quality of data used in decisions and separately its inability to meet statutory deadlines for reports to Congress on various EPA programs.

'Early Notice' Of DOJ Referrals May Weaken Regions' Enforcement Leverage

EPA enforcement chief Susan Bodine's mandate that headquarters receive "early notice" of regions' civil cases slated for referral to the Justice Department (DOJ) could weaken regions' leverage in settlement talks, an industry source says, as DOJ referrals are often used as a threat to push for higher penalties in enforcement actions.

EPA Eyeing Pesticide Use Data For ESA Reviews, As Advisers Fault Delays

EPA is planning to bolster consideration of pesticide use data in a revised process for assessing pesticides' risks to endangered species, arguing that Obama-era approaches yielded unrealistic outcomes, though some agency pesticide advisers contend the National Academy of Sciences (NAS) favored modeling given data quality constraints.

Daily Feed

White House staff said to urge Trump to fire Pruitt

Two top administration officials say the president's "enthusiasm" for the EPA administrator "may be cooling because of the ongoing cascade of alleged ethical and legal missteps."

Ewire: Top Trump EPA antagonist Schneiderman resigns

In today's Ewire: New York Attorney General Eric Schneiderman (D), a leading critic of the Trump EPA, has resigned after several physical abuse allegations.

Greenwire



AN E&E NEWS PUBLICATION

EPA

More threats against Pruitt revealed

[Kevin Bogardus](#), E&E News reporter



Published: Tuesday, May 8, 2018

EPA Administrator Scott Pruitt last month leaves a press briefing at EPA headquarters with a security guard. Andrew Harnik/Associated Press

Threats against EPA Administrator Scott Pruitt have spiked compared with what his predecessor at the agency faced during her tenure. Office of Inspector General records obtained by E&E News under the Freedom of Information Act offer the most comprehensive account yet of the threats that have stacked up at the agency targeting Pruitt.

But the documents also show that social media and mail sent to EPA taking issue with Pruitt's policies or poking fun at the administrator were often categorized as threats. Several of the IG probes were closed either with never finding the perpetrator or with authorities declining to prosecute those making threats.

One [data table](#) shows Pruitt faced 16 threats at one point in fiscal 2017 compared with three that year for Gina McCarthy, who led EPA in President Obama's second term. The previous year, four threats against McCarthy were reported, according to [documents](#).

In one [memo](#) dated last August, Assistant Inspector General for Investigations Patrick Sullivan, whose office probes threats against EPA personnel and facilities, offered a summary of threat investigations related to Pruitt. CBS News first [reported](#) on an unredacted version of the memo last month.

E&E News has previously reported on some of those threats, such as a threatening Twitter post against Pruitt and Senate Majority Leader Mitch McConnell (R-Ky.) from someone who was drinking while watching liberal commentator Rachel Maddow. Another individual sent a "potentially threatening postcard" to Pruitt — agents interviewed that person while they wore two handguns on their waist. Both apologized, and federal prosecutors decided against moving forward on either case ([Greenwire](#), Jan. 11).

Pruitt's critics have questioned whether the threats have been overblown as EPA sought to justify the administrator's expansive security measures, including a 24/7 personal protection detail and flying first class ([see related story](#)).

Sens. Tom Carper (D-Del.) and Sheldon Whitehouse (D-R.I.) obtained internal EPA records that raised questions about the agency's reasoning for Pruitt's heightened security. One February 2018 memo the senators quote from in a [letter](#) last month says that "[u]sing all source intelligence resources, EPA Intelligence has not identified any specific credible direct threat to the EPA Administrator."

Some who disagreed with Pruitt's actions at EPA have been investigated as threats against the administrator. Protesters who disrupted one of Pruitt's speeches last year were the subject of an IG probe, which later determined they were not a threat ([Greenwire](#), Jan. 23).

'Intimidating and potentially threatening'

Other investigations seemed to have come across critical free speech directed at Pruitt rather than those threatening physical harm.

In March this year, someone posted inside an EPA headquarters elevator a *Newsweek* magazine cover with a mustache drawn on Pruitt. A special agent reviewed the cover, found no "overt threat" and recommended the case for closure, according to its [report](#).

Another [closing report](#) found a person who posted a tweet regarding Pruitt, which could be interpreted "as intimidating and potentially threatening towards" the administrator.

In an interview, the individual said they weren't happy with Pruitt's policies and wanted to express "displeasure," picking the first unhappy GIF to go with their tweet. The person said they weren't violent and didn't want anything to happen to Pruitt. The case was closed after federal authorities declined to prosecute.

Other IG investigations found more direct threatening language aimed at Pruitt.

In April 2017, the IG was notified by U.S. Capitol Police that Sen. James Lankford's (R-Okla.) office had received an email saying, "We support the assassination and execution of Scott Pruitt who will rape this country and the EPA," according to one [report](#). The email also threatened assassination for President Trump, Vice President Mike Pence and "most other terrorist pig republicans."

The email's author, interviewed by agents at the person's Oklahoma residence, said Pruitt was "just a pawn for the oil and gas industry" but the author didn't want to have him killed. The case was declined for prosecution, but a bar notice was issued against the person, denying him or her access to all EPA facilities.

Further, throughout the spring of last year, Pruitt's daughter received threatening Facebook messages, which came under IG investigation. One of those messages read, "I hope your father dies soon, suffering as your mother watches in horror for hours on end," which Pruitt described in congressional hearings nearly two weeks ago.

It is suspected that the Facebook account that sent the messages was deleted. The case's [closing report](#) said it was recommended for closure.

[Click here](#) to read the EPA IG's latest batch of records on threats against Pruitt.

EPA

Flying coach 'would endanger' Pruitt's life — memo

[Kevin Bogardus](#), E&E News reporter



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EPA Administrator Scott Pruitt, shown here in front of a mural of Yosemite National Park on Capitol Hill, was cleared to fly first class for security purposes, according to an EPA memo obtained under the Freedom of Information Act. Andrew Harnik/Associated Press

EPA Administrator Scott Pruitt's personal security chief last year requested the agency boss fly first class after some uncomfortable encounters during his travel. Pasquale "Nino" Perrotta, the former EPA special agent who led Pruitt's security detail, said in a [memo](#) obtained by E&E News under the Freedom of Information Act that having Pruitt in economy seats could be dangerous to the administrator.

"We are requesting that the EPA Administrator be strategically seated in business and or first class seating when on official travel. We have observed and [sic] increased awareness and at times lashing out from passengers which occurs while the Administrator is seated in coach with [Protective Services Detail] not easily accessible to him due to uncontrolled full flights," Perrotta said in the May 1, 2017, memo.

"Therefore, we believe that the continued use of coach seats for the Administrator would endanger his life and therefore respectfully ask that he be placed in either business and or first class accommodations."

Security has become a paramount concern at Pruitt's EPA as threats against the administrator have piled up ([see related story](#)).

Perrotta's three-sentence memo had been used by EPA to justify Pruitt's penchant for the pricier airplane seats. The EPA chief's use of first class, however, attracted heavy scrutiny from lawmakers, resulting in Pruitt saying he plans to fly coach when traveling from now on.

Former EPA enforcement officials questioned the rationale of Perrotta's memo.

"The idea he would have to fly first class as a security measure is absurd," one former senior EPA enforcement official told E&E News. "Wherever the EPA administrator was on a plane, he would have security adjacent to him to intervene if needed. And that is in first class and coach. It doesn't matter where he is on the plane. ... The logic is goofy."

Fred Burnside, who spent 23 years at EPA, including as director of the agency's Office of Criminal Enforcement, Forensics and Training from 2008 to 2010, said, "Passengers are never armed, so the risks to Administrator Pruitt's life are minimal, especially compared to other public venues at which he frequents."

He added, "It is true that the administrator would be in closer proximity to more passengers in coach than in first or business class, but there could just as easily be 'increased awareness' and 'lashing out' from passengers in the premium cabins."

An EPA spokesman said the decision to have Pruitt fly first class was made by his security detail.

"Security decisions are made by EPA's Protective Service Detail," said EPA spokesman Jahan Wilcox.

Both Pruitt's travel and security spending have come under review by the EPA inspector general. The agency watchdog plans to release those reports this summer.

Perrotta has been a focus of media attention as ethics allegations of excessive spending and misuse of Cabinet-level authority have swirled around Pruitt.

Perrotta retired from EPA and also sat for a transcribed interview with House Oversight and Government Reform Committee staff last week.

Perrotta's memo justifying Pruitt's first-class flights didn't win over former EPA officials, who noted that administrators in the past tended to fly coach. Michael Hubbard, a former EPA special agent in charge based in the agency's Boston office, blasted the document.

"Written by a law enforcement professional, it is patently ludicrous because it gives no facts for this increased expenditure," Hubbard said. "Saying flying coach would endanger his life is the dumbest thing I've ever seen in a law enforcement memo."

CHEMICALS

Pruitt meets, disappoints families harmed by paint stripper

[Corbin Hiar](#), E&E News reporter



Published: Tuesday, May 8, 2018

Drew Wynne, shown here at a wedding, died recently while working with paint stripper containing methylene chloride. Environmental Defense Fund

EPA Administrator Scott Pruitt met today with the families of three men who were killed by a paint-stripping chemical that the Obama administration sought to ban from commercial use.

Drew Wynne and Joshua Atkins, both 31, and Kevin Hartley, 21, all died since last October while working with paint strippers containing methylene chloride.

The families sat down in the administrator's Washington office for about 35 minutes with Pruitt; Ryan Jackson, his chief of staff; Nancy Beck, the top political appointee in EPA's chemicals office; and two other aides, according to Brian Wynne, Drew Wynne's older brother.

They told the EPA leaders about how they lost their loved ones and pressed Pruitt to finalize an effective ban on the chemical proposed by the Obama EPA.

The previous administration moved to require methylene chloride to be distributed in 55-gallon drums, an effort to remove the toxic chemical from store shelves.

But under Pruitt's leadership, EPA repeatedly pushed back the date the rule would take effect, and late last year, the Trump administration moved the regulation into its "long-term" action category for which there is no implementation date.

The response the families got from Pruitt was disappointing, Brian Wynne argued.

"We appreciate him meeting with us," he said. "But we're not satisfied with what we got out of it. And we made that very clear. Anything short of a ban is not going to work for us."

Brian Wynne pledged to continue pressing "the issue from a legislative angle and from a retail angle" and predicted that "we're going to get a ban very soon."

The agency has known since 2015 that methylene chloride poses acute risks to users, including asphyxiation and heart attacks. Long-term exposure can also cause cancer and damage to the liver and kidneys.

Brian Wynne called E&E News after meeting with Pruitt's team and a lawmaker who represents his family, Sen. Tim Scott of South Carolina. Scott was one of three Republican lawmakers from the Palmetto State who urged Pruitt earlier this year to restrict the sale of methylene chloride, which has killed more than 50 people in the last 35 years.

The Wynne family is also urging Lowe's, where Drew Wynne bought the paint stripper that killed him, and other home improvement retailers to phase out sales of potentially deadly methylene-chloride-containing products ([Greenwire](#), March 29).

Meanwhile, Democratic lawmakers have been pressuring EPA to act, too. Pruitt faced questions about methylene chloride in both of his House budget appearances last month.

Pruitt told lawmakers then: "I take this issue very seriously."

When pressed for a timeline on when EPA would decide on the Obama administration proposal, he said, "It kind of depends on the volume of comments. But I would imagine that it's something that we can do this year."

Pruitt reiterated that commitment in today's meeting, which was arranged with the help of the public health advocacy group Safer Chemicals, Healthy Families. That did little to satisfy Brian Wynne.

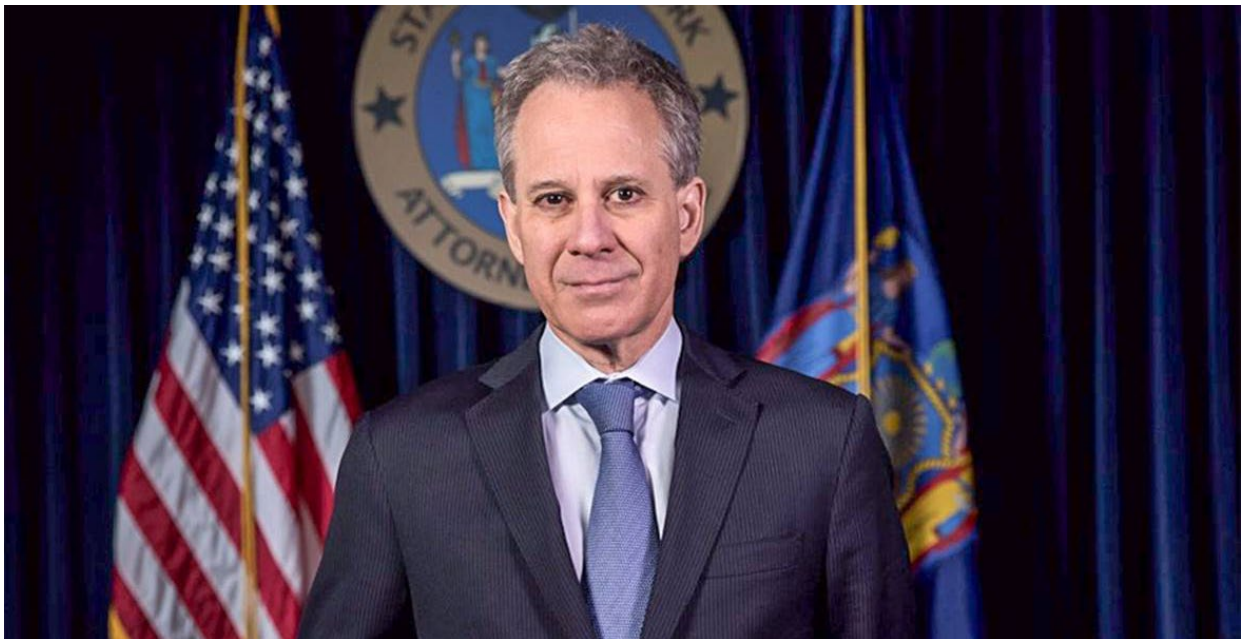
"Soon is not acceptable when people are dying," he said.

Asked to comment on the meeting, an EPA spokeswoman said only that the agency is reviewing public reaction to the methylene chloride proposal "including comments suggesting that EPA quickly finalize these actions and comments suggesting that these actions be evaluated as part of the group of the first ten chemicals undergoing initial risk evaluations under the Lautenberg amendments to [the Toxic Substances Control Act]."

LAW

In Schneiderman's wake, battle against Trump continues

[Amanda Reilly](#), E&E News reporter Published: Tuesday, May 8, 2018



New York Attorney General Eric Schneiderman (D) yesterday announced his resignation in the wake of accusations of assault. @AGSchneiderman/Twitter

New York Attorney General Eric Schneiderman's abrupt resignation is unlikely to affect his state's legal war against the Trump administration's regulatory rollbacks.

The Democrat announced his resignation last night after four women who had been romantically involved with him alleged in a *New Yorker* story that he had physically abused them and become violent during their relationships. His retirement is effective at the end of today (*Climatewire*, May 8).

Legal experts and former state attorneys general say they expect the New York office to continue battling the Trump administration and maintain the climate investigation against Exxon Mobil Corp. that Schneiderman began in 2015.

"I don't see seismic changes coming from within the office of the attorney general," said Doug Gansler, a former Maryland Democratic attorney general whose law practice includes work for attorneys general of both parties.

New York Solicitor General Barbara Underwood will serve as acting attorney general until the Legislature chooses a replacement.

"I am honored to serve the people of New York as acting Attorney General," Underwood said in a statement. "The work of this office is critically important. Our office has never been stronger, and this extraordinarily talented, dedicated, and tireless team of public servants will ensure that our work continues without interruption."

A former state senator, Schneiderman was elected state attorney general in 2010 and re-elected in 2014. He was considered a likely candidate for governor in 2022. As attorney general, he was known for aggressively pushing back against the Trump administration, often leading a coalition of his Democratic colleagues from other states in litigation over regulatory rollbacks. He called the election of Trump a "galvanizing moment among state AGs."

In all, Schneiderman filed more than 100 lawsuits against the Trump administration, *The New York Times* reported. More than a dozen of those suits challenged rollbacks of environmental and energy policies, according to the State Energy and Environmental Impact Center, which formed last year at New York University to help coordinate and track states' efforts in fighting the Trump administration.

Among the administration actions that New York challenged in court: the delay in the Obama era's Clean Water Rule, EPA's delayed Clean Air Act designations under the 2015 ozone standard, the Energy Department's delay in publishing energy efficiency standards, the suspension of a rule to protect first responders at chemical facilities, and failure to address out-of-state pollution emissions.

Last month, Schneiderman led 12 attorneys general, the District of Columbia and Chicago in suing EPA for having "unreasonably delayed" issuing regulations limiting methane emissions from oil and gas operations.

Schneiderman also intervened or filed amicus briefs in a half-dozen other cases, as well as filed comments on a host of deregulatory activities at EPA and other agencies. He's played a big role in defending the Obama administration's Clean Power Plan, which aimed to reduce greenhouse gas emissions from power plants.

Outside of challenging the Trump administration, Schneiderman — along with Massachusetts Attorney General Maura Healey — has been investigating Exxon over allegations that the oil giant misinformed the public and investors on the dangers of climate change. Schneiderman issued a subpoena to Exxon in November 2015 seeking documents dating back to the 1970s, while Healey opened her probe in April 2016. Exxon has fought back against both investigations. In a statement, Healey said that she was "deeply troubled" by the allegations made against Schneiderman and that she supported his decision to resign.

"The women and men who serve in the New York Attorney General Office work every day to enforce the law and protect the rights of all Americans," she said. "I look forward to working with the next Attorney General of New York to continue that important work."

'Well-oiled machine'

Gansler, a former president of the National Association of Attorneys General, said Schneiderman's resignation wouldn't dramatically alter his office's mission since the staff will largely stay the same.

"The reality is the assistant attorneys general and the deputy attorneys general do the lion's share of the work, the day-to-day work," he said. "I would not expect a major turnover in the office at all."

With more than 650 assistant attorneys general and 1,700 employees, the New York office has among the biggest staffs of any state attorney general operation.

"The New York Attorney General's Office has, in recent years to support its litigation, hired a lot of certainly not only top-notch attorneys but economists, other experts across a range of issues to help with the litigation," said Paul Nolette, an assistant professor of political science at Marquette University who has studied state attorneys general.

"It's a well-oiled machine that's not going to stop depending on who comes in," he said.

Nolette predicted the state's next attorney general would be another progressive Democrat.

New York has a long history of high-profile attorneys general going back to Robert Abrams, who served in the role during the Reagan era through the early 1990s. Democrats Eliot Spitzer and Andrew Cuomo, who both went on to become governor, preceded Schneiderman.

"Spitzer made his name going after Wall Street. ... Cuomo emphasized going after student loan companies as a big part of his investigations," Nolette said.

"Schneiderman had the opportunity to have Trump in office and sue him on a number of issues, including making environmental policy a priority," he said.

"Whoever comes in next will have their own priorities, but I think it's going to look quite similar."

State lawmakers will choose a replacement to fill Schneiderman's term, which runs to the end of this year. Republican corporate lawyer Manny Alicandro earlier this week entered the Republican primary race for attorney general, but he'll likely face an uphill battle in the fall election.

Voters in the state "widely support strong environmental policies," said Jayni Hein, policy director at New York University's Institute for Policy Integrity.

"The state's efforts will persist given electoral forces and dedicated career staff," she said.

In the short term, other Democratic attorneys general, such as Healey of Massachusetts and California Attorney General Xavier Becerra, may take the lead on challenging EPA or other federal agencies for any regulatory rollbacks that occur in the coming weeks or months.

The attorneys general from Maryland, Illinois, New Mexico, Oregon, Washington state and the District of Columbia have also been among the coalition that's challenged the Trump administration's deregulatory agenda.

Last August, NYU formed the State Energy and Environmental Impact Center, a project funded by a nearly \$6 million grant from Bloomberg Philanthropies to offer legal, analytical and communications tools to boost coordination among state officials.

David Hayes, executive director of the center and a former Interior Department official, said today he expects attorneys general to keep aggressively litigating environmental issues in the Trump era.

"As long as the Trump administration continues to ignore the rule of law, roll back important environmental protections, and sell out our nation's public lands and offshore waters," he said, "progressive state attorneys general across the nation will continue to fight back and hold this administration accountable."

EPA

More groups demand wider scrutiny of Pruitt's science rule

[Sean Reilly](#), E&E News reporter



Published: Tuesday, May 8, 2018

EPA is legally bound to run its "secret science" proposal before the Clean Air Scientific Advisory Committee, according to former agency employees. Robin Bravender/E&E News

Not only must EPA hold a public hearing on a controversial proposal to overhaul its handling of scientific research, but it must also run the plan past two key advisory committees, an advocacy group made up mainly of former agency employees argues in newly filed comments.

Under a 1978 law that applies to any proposed "criteria document," EPA must submit the draft rule to the Science Advisory Board for review, according to the [filing](#) released late yesterday by the Environmental Protection Network.

And because the [proposed rule](#) would amend air quality criteria for lead and particulate matter, EPA must also give the Clean Air Scientific Advisory Committee the opportunity to weigh in, two of the group's leaders said in the comments.

If the committee recommends any changes, EPA Administrator Scott Pruitt must consider those recommendations and offer "a reasonable explanation" if he opts against adopting them.

"EPA cannot proceed with this action until these requirements are satisfied," they added in citing the need for the committee's review.

EPA press aides did not reply to an emailed request for comment this morning on that score.

The draft rule, published early last week in the *Federal Register*, would effectively bar EPA from using scientific studies in crafting significant new regulations unless the underlying data and models are "publicly available in a manner sufficient for validation and analysis."

While Pruitt has touted the proposal as a means of boosting public confidence in EPA regulatory decisions, critics say it's intended to block the agency from tapping valid research that might justify the need for stronger rules to protect public health and the environment.

Dozens of advocacy groups and Democratic elected officials have also called for an extension of the current 30-day public comment period by anywhere from two to five months.

The existing timetable will make it difficult to fully analyze and address "these far-reaching and long-lasting adverse impacts of this rule on the nation's air quality," the American Lung Association [said](#) in one such request last week.

In its own missive, the Environmental Protection Network sought a 90-day comment period, adding that EPA must also hold a public hearing in light of the potential ramifications for the Clean Air Act.

The group, founded early last year, is made primarily of ex-EPA staffers but also includes former state government employees, a spokeswoman said this morning. It has already released two critical analyses of the draft rule.

In arguing that two prominent EPA advisory panels also have a statutory role to play in evaluating the proposal, it has added to a growing chorus of objections.

The Clean Air Scientific Advisory Committee is a seven-member panel that provides outside expertise to EPA during statutorily required reviews of the air quality standards for a half-dozen "criteria" pollutants named in the Clean Air Act.

Its input is needed in the case because EPA wants to bypass two court rulings that previously upheld the agency's prerogative to tap "non-public data" in setting standards for airborne lead and particulate matter.

The agency is now "proposing to exercise its discretionary authority to establish a policy that would preclude it from using such data in future regulatory actions," according to a footnote in the proposed rule that cites those two rulings, both by the U.S. Court of Appeals for the District of Columbia Circuit.

The Science Advisory Board, which currently has 44 members, offers advice to EPA on a variety of topics. Under the 1978 law, known as the Environmental Research, Development and Demonstration Authorization Act, Pruitt must give the board the chance to assess "any proposed criteria document, standard, limitation, or regulation," the Environmental Protection Network said in its comments.

While the board can provide feedback on the proposal, however, Pruitt doesn't need its approval to move forward, the network said.

NOMINATIONS

Controversial Trump pick for claims court withdraws

[Amanda Reilly](#), E&E News reporter

Published: Tuesday, May 8, 2018

A conservative water and endangered species attorney who once referred to Supreme Court Justice Anthony Kennedy as a "judicial prostitute" has withdrawn from consideration for a seat in the U.S. Court of Federal Claims.

Damien Schiff informed the White House earlier this year that he no longer wished to be considered for the seat, *BuzzFeed* first reported last night. Schiff confirmed the report in an email today to E&E News.



Damien Schiff, Pacific Legal Foundation

President Trump nominated Schiff in May 2017 for a 15-year term on the claims court, which hears monetary claims against the government, including claims that the government took private property without just compensation ([Greenwire](#), June 21, 2017).

Schiff has been an attorney at the conservative Pacific Legal Foundation, which often brings cases against the government on behalf of property owners, since 2005. He's been a critic of expansive federal water and endangered species regulations.

He formerly represented Mike and Chantell Sackett of Priest Lake, Idaho, in a 2012 case in which the Supreme Court ruled 9-0 that property owners facing potential enforcement actions under the Clean Water Act could seek judicial review before being forced to comply.

But he got in trouble at his confirmation hearing last year for a 2007 post he wrote in his now-defunct personal blog dissecting an analysis of Kennedy's role as a swing vote in the Supreme Court.

"It would seem that Justice Kennedy is (and please excuse the language) a judicial prostitute, 'selling' his vote as it were to four other Justices in exchange for the high that comes from aggrandizement of power and influence, and the blandishments of the fawning media and legal academy," Schiff wrote.

At the hearing, Democratic senators pointed to the post to question whether Schiff had the temperament to be a judge. Sen. John Kennedy (R-La.) also raised concerns about the nominee's trail of written material. The Senate sent Schiff's nomination back to the White House at the end of last year; he was never renominated.

CHEMICALS

Calif. judge upholds ruling on cancer warnings for coffee

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A Los Angeles judge yesterday finalized a court ruling that coffee sold in California has to carry cancer warnings.

Starbucks Corp. and other coffee roasters and sellers did not show that coffee's benefits were greater than the risks imposed by a carcinogen created by the roasting process, according to Superior Court Judge Elihu Berle.

The Council for Education and Research on Toxics brought the suit against about 90 companies in 2010.

The coffee industry argued that the chemical acrylamide was not present in levels that would cause harm. Berle had tentatively ruled in March that the defendants "failed to satisfy their burden of proving ... that consumption of coffee confers a benefit to human health" ([Greenwire](#), March 30).

This final ruling allows the Council for Education and Research on Toxics to seek a permanent injunction, which would either require the labels or a commitment from the industry to remove acrylamide from the coffee (Brian Melley, [Associated Press](#), May 8). — CS

TOXICS

EPA uncovers more lead-contaminated neighborhoods in Ind.

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EPA officials have uncovered heavy metal contamination in more than 20 yards in two Indiana towns southeast of Chicago, part of a larger lead crisis in the region that's still unfolding.

The soil samples from Hammond and Whiting, Ind., taken near an abandoned smelter found high levels of lead and arsenic, which spewed into the air for nearly a century. EPA expects to find more.

But residents near the former Federated Metals Corp. property are wondering what took so long. EPA and the Indiana Department of Environmental Management had designated it as toxic in the 1980s, but officials only began testing nearby soil after digging up records about the site at EPA's Chicago office in 2016.

EPA sampled 30 homes last year, and 25 had lead levels above 400 parts per million, the agency's cleanup standard. One had levels at 2,760 ppm. About 10,000 people live within a mile of the facility.

EPA has earmarked \$1.7 million to clean up homes where children and pregnant women live and is waiting for more testing results to come in.

But despite EPA Administrator Scott Pruitt's focus on the Superfund program, residents wonder why he didn't address it, or even tell them he was coming, on a visit to one of the contaminated areas last month.

Indiana officials did not respond to requests for comment, and EPA sent a statement from Region 5 Administrator Cathy Stepp saying that soon, "impacted families in Hammond and Whiting will no longer face an unacceptable threat from lead-contaminated soil in their own backyards."

But locals still have limited information about the status of testing and cleanup.

"This is another example of the EPA and the state of Indiana dropping the ball time after time again," said Mark Templeton, director of the Abrams Environmental Law Clinic at the University of Chicago (Michael Hawthorne, [Chicago Tribune](#), May 8). — NS

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